No. 14838

In the United States Court of Appeals for the Ninth Circuit

OXNARD CITRUS ASSOCIATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

THEOPHIL C. KAMMHOLZ,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
MARCEL MALLET-PREVOST,
Assistant General Counsel,
NORTON J. COME.
DUANE BEESON,
Attorneys,
National Labor Relations Board.

INDEX

	Page
Jurisdiction	1
Counterstatement of the case	2
I. The Board's findings of fact	2
A. The negotiations for a contract	2
B. The attempt of a majority of the employees to revoke the Union's authority to represent them	5
II. The Board's conclusions and order	5
Argument	6
The Board's findings that petitioner violated Section 8 (a) (5) and (1) of the Act and its order requiring petitioner to bargain with the Union as now affiliated are valid and proper	6
Conclusions	11

AUTHORITIES CITED

Cases:	
Jeffrey-DeWitt Insulator Co. v. *N. L. R. B.*, 91 F. 2d 134 (C. A. 4), certiorari denied, 302 U. S. 731	11
N. L. R. B. v. *Crompton-Highland Mills, Inc.*, 337 U. S. 217	8
N. L. R. B. v. *Hill Stores, Inc.*, 140 F. 2d 924 (C. A. 5)	11
N. L. R. B. v. *Jacobs Mfg. Co.*, 196 F. 2d 680 (C. A. 2)	10
N. L. R. B. v. *Andrew Jergens Co.*, 175 F. 2d 130 (C. A. 9), certiorari denied, 338 U. S. 827	8
N. L. R. B. v. *U. S. Cold Storage Corp.*, 203 F. 2d 924 (C. A. 5), certiorari denied, 346 U. S. 818	7
Shell Oil Co., 77 NLRB 1306	8
Statutes:	
National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. Sec. 151, *et seq.*)	1
Section 8 (a) (1)	5, 6
Section 8 (a) (5)	5, 6
Section 10 (c)	1
Section 10 (e)	1
Section 10 (f)	1

In the United States Court of Appeals for the Ninth Circuit

No. 14838

OXNARD CITRUS ASSOCIATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION FOR REVIEW AND REQUEST FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon the petition of Oxnard Citrus Association to review and set aside an order of the National Labor Relations Board (R. 75–77)[1] issued against petitioner on April 13, 1955, following the usual proceedings under Section 10 (c) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Sec. 151, *et seq.*), hereafter called the Act. In its answer (R. 79–83) the Board has requested enforcement of its order. This Court has jurisdiction of the proceeding pursuant to Section 10 (e) and (f) of the Act, the unfair labor practices

[1] Reference to portions of the printed record are designated "R." Wherever in a series of references a semicolon appears, references preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

having occurred at petitioner's plant in Oxnard, California, within this judicial circuit. The Board's decision and order are reported in 112 N. L. R. B. No. 19.

COUNTERSTATEMENT OF THE CASE

As more fully explained in the Board's brief (pp. 2–5) in No. 14840 on this Court's docket (*Santa Clara Lemon Association* v. *N. L. R. B.*), this is one of five cases before the Court in which the Board found that the employers, a group of independent nonprofit cooperatives engaged in processing and packing of citrus fruit in Southern California,[2] each committed unfair labor practices by breaking off bargaining negotiations with the certified representative of its employees,[3] and also by unilaterally increasing wages. The evidentiary facts upon which the Board based its findings in this case may be summarized as follows:

I. The Board's findings of fact

A. The negotiations for a contract

Following a representation election held pursuant to a consent election agreement (R. 1–5), in which the Union won a majority of the votes of Oxnard's employees, the Board certified the Union as bargaining representative of Oxnard's employees on November 13, 1953 (R. 59–60; 8–9). Thereafter, the Union

[2] Petitioner, herein sometimes referred to as Oxnard, operates a packing plant in Oxnard, California, from which it ships a substantial amount of citrus into interstate commerce (R. 59; 97–98). No jurisdictional issue is presented.

[3] United Fresh Fruit and Vegetable Workers Union, L. I. U., No. 78, CIO, herein called the Union.

and Oxnard met on five occasions for the purpose of negotiating a collective bargaining agreement (R. 60; 127, 131, 133, 137, 138). On the first of these occasions, December 2, 1953, the Union submitted a proposed contract, the provisions of which were read and explained (R. 60; 34–45; 101–102, 116, 127, 131). At each of the succeeding meetings, held at fortnightly intervals except during the Christmas holidays, the parties continued to negotiate with respect to the subject matters covered by the proposed contract (R. 60; 103–108, 110–112, 117–123, 131–142). Oxnard offered several counterproposals and it became apparent that there were many points upon which agreement could readily be reached (R. 60; 46–53, 110, 113–114, 121, 131–134). The parties, however, disagreed from the start with respect to the Union's request for a union shop clause, by which employees would be required to become Union members and pay dues and initiation fees as a condition of employment (R. 60; 34–35, 104, 106, 110, 120, 128, 132–133, 140). Another point of disagreement pertained to the Union's seniority proposal, which made no allowance for Oxnard's position that the families of the citrus growers whose products were processed and packed by Oxnard should "have first call on available jobs" (R. 60; 111, 123, 140, 154–155).

At the fifth meeting of the parties, on January 14, 1954, the parties again stated their opposing views on the foregoing matters, whereupon Oxnard's attorney, acting as its spokesman, stated that because of these differences "he did not feel that there was any use to continue these meetings" (R. 60; 112).

The Union's representative, Syd Rose, replied that "the fact that [the parties] were apart on these matters didn't call for the ending of [the] meetings, that [the parties] should continue in an effort to find those matters on which [they] are in agreement, and simply place these matters aside and continue to the next subject" (R. 60–61; 112). At this stage in negotiations there had not yet been any discussion of wages, hours, vacations, insurance or pension plans, arbitration, check off, and some of the other subjects contained in the contract originally proposed by the Union (R. 60; 112–113). Nonetheless, Oxnard "declined the offer of the Union to continue the meetings," and negotiations were ended (R. 61; 112).

A few days later, on January 18, Oxnard's attorney confirmed, in a telephone call to the Union, that Oxnard "had definitely broken off negotiations with the Union" (R. 61; 115). A month later, on February 19, the Union made an attempt to reinstitute contract discussions, but again Oxnard refused to meet with the Union, stating in a letter signed by its attorney that it could not see that "any good purpose would be served by continued bickering" (R. 61; 53–55). In a reply to this letter the Union stressed that it had "pointed out repeatedly during the discussions on the Union Shop that if we were able to negotiate a generally satisfactory agreement, the Union Shop matter would not stand in the way of our signing a contract" (R. 61–62; 55–56). The Union also emphasized its "willingness * * * to compromise", and again requested "that negotiations be

resumed at the earliest possible time" (*ibid.*). However, no further meetings were held (R. 61–62; 112).

On March 8, 1954, several weeks after Oxnard had terminated contract negotiations, and again on April 19, it increased wages without notifying or consulting with the Union (R. 62; 114, 126).

B. The attempt of a majority of the employees to revoke the Union's authority to represent them

On February 16, about a month after the last negotiating meeting between Oxnard and the Union, a petition signed by a majority of Oxnard's employees was served on Oxnard's manager in which the employees stated that they did "not wish to be represented any longer by the Union" (R. 62; 23). The petition named a committee of five employees whom Oxnard was requested to recognize as the employees' bargaining representative (*ibid.*).

Following receipt of the petition, Oxnard's manager authenticated the signatures thereon as those of its employees, and then referred the matter to Oxnard's attorney (R. 62; 162). The latter wrote the Union on April 8 that Oxnard would "recognize the petitions to the extent required by law" (R. 62; 57).

II. The Board's conclusions and order

Upon the foregoing facts the Board concluded that Oxnard had violated Section 8 (a) (5), and (1) of the Act by breaking off negotiations with the Union, by refusing to deal further with it, and by unilaterally granting a wage increase (R. 75). To remedy Oxnard's violations of the Act, the Board's order requires Oxnard to cease and desist from refusing to bargain

with the Union, under its new name acquired upon affiliation with the Packinghouse Workers of America,[4] and from interfering with the efforts of the Union to represent its employees. Affirmatively, the Board's order requires Oxnard to bargain collectively with the Union as presently affiliated, and to post appropriate notices (R. 76–77).

ARGUMENT

The Board's findings that petitioner violated Section 8 (a) (5) and (1) of the Act and its order requiring petitioner to bargain with the Union as now affiliated are valid and proper

Two of the contentions made by Oxnard are common to the four other similar cases presently before the Court (see p. 2, *supra*): (1) that the Union's affiliation with the Packinghouse Workers resulted in the formation of a new and different union from that certified by the Board, and that the Board's order is therefore invalid insofar as it requires Oxnard to bargain with the Union as now affiliated (Br. 5–6), and (2) that while the issue of Oxnard's obligation to bargain with the Union was being adjudicated following its refusal to meet further with the Union, and thus negotiations were in effect "suspended," it was warranted in increasing wages without consulting the Union (Br. 6–8). These contentions are fully discussed in the Board's brief in Case No. 14840. Accordingly, rather than repeat the same discussion here, we respectfully refer the Court to the Board's

[4] As explained in the Board's brief (pp. 13–15) in No. 14840, to which we respectfully refer the Court for a full statement of the facts, the Union affiliated in July, 1954 with the United Packinghouse Workers of America, CIO, and its certification as representative of Oxnard's employees was thereafter amended accordingly. See R. 28–34.

brief in No. 14840 (pp. 25–38) for a statement of the reasons why we believe both contentions should be rejected.

We turn then to the third contention made in this case, that Oxnard was justified in refusing to bargain with the Union following the meeting of January 14, 1954, nearly two months before granting the wage increase referred to above, because on that date the parties had reached an impasse in contract negotiations.

There is, of course, no requirement under the Act that parties must continue fruitless contract negotiations "in the face of a genuine impasse." *N. L. R. B.* v. *U. S. Cold Storage Corp.*, 203 F. 2d 924, 928 (C. A. 5). But the Board found in this case that no such "genuine impasse" had been reached by the parties (R. 63, 75), and there is ample evidence to support this finding. Thus, at the time that Oxnard refused to continue contract discussions upon the ground that the parties could not agree upon a provision for union security, there had been no negotiations with respect to many other important subjects, including wages, hours, vacations, arbitration, and insurance or pension plans (*supra,* p. 4). Until these matters had been explored it cannot be assumed that a possible willingness to compromise with respect to one or more of them would fail to induce a reciprocal attitude as to union security, and thus pave the way to an over-all settlement. It is common knowledge that in the give and take of good faith bargaining agreement ordinarily does not turn on a consideration of each contract proposal independently, but rather on compromise and concession resulting

from consideration of interdependent proposals. Indeed, Oxnard's representative recognized this when, during negotiations, he explained his submission of counterproposals on a piece-meal basis on the ground that "each new proposal or each clause that was settled on had a bearing on the other proposals" (R. 149–150). Accordingly, until negotiations had covered all important subjects in the bargaining relationship, it could not be said that "there has been a *bona fide* but unsuccessful attempt to reach an agreement," which, this Court has held to be prerequisite to a finding of impasse. *N. L. R. B.* v. *Andrew Jergens,* 175 F. 2d 130, 136 (C. A. 9), certiorari denied, 338 U. S. 827.

The decisions relied on by Oxnard (Br. 12–16) do not support its contrary contention that, where the parties have reached disagreement on a single subject early in bargaining, there is no need under the Act to continue discussions with respect to other subjects in an effort to find a basis for an overall agreement. In none of these cases were negotiations broken off until the parties had "explored the possibility of reaching agreement on *all proposals and counterproposals* submitted by the respective parties" (*Shell Oil Co.,* 77 N. L. R. B. 1306, 1308, cited on p. 15, *Oxnard's* brief, emphasis added).

Controlling in this respect is the Supreme Court's decision in *N. L. R. B.* v. *Crompton-Highland Mills,* 337 U. S. 217. In the *Crompton* case the employer and the union, following lengthy contract negotiations, "reached something of an impasse" (337 U. S. at 218) with respect to wages, whereupon the employer, sim-

ilar to Oxnard's action with respect to wages in this case, effected an increase without consulting the union and in an amount higher than any previous offer made to the union. In holding that the employer was not warranted in breaking off negotiations where he had not even discussed with the union the action he proposed to take unilaterally, the Court fully explained the requirement under the Act that negotiations continue until all basis for agreement with respect to all matters subject to bargaining has been exhausted (337 U. S. at p. 224):

> We do not have here a case where the bargaining had come to a complete termination cutting off the outstanding invitation of the certified collective bargaining representative to bargain as to any new issue on such a matter as rates of pay * * * The opening which a raise in pay makes for the correction of existing inequities among employees and for the possible substitution of shorter hours, vacations or sick leaves, in lieu of some part of the proposed increase in pay, suggests the infinite opportunities for bargaining that are inherent in an announced readiness of an employer to increase generally the pay of its employees. The occasion is so appropriate for collective bargaining that it is difficult to infer an intent to cut off the opportunity for bargaining and yet be consistent with the purpose of the National Labor Relations Act.

That "the occasion [was] appropriate for collective bargaining" when Oxnard broke off relations in this case is particularly clear in view of the continued requests of the Union that the issue of union security

be put aside, and that the parties discuss other matters, such as wages, in an effort to find a basis for complete settlement (*supra,* p. 4). The likelihood of success, if such a procedure were followed in good faith, was foreshadowed by the demonstrated ability, which Oxnard concedes (Br. 19), of the parties to reach terms on many of the subjects they had discussed (*supra,* p. 3).[5] Moreover, the Union had indicated during the course of negotiations that its bargaining position was open to compromise, even with respect to its request for a union shop (R. 110, 111, 156, 157). Under these circumstances, Oxnard's determination to terminate negotiations can be explained only as a "virtual insistence upon a prejudgment that no agreement could be reached by means of discussion," and not by the existence of a complete bargaining impasse, for there was none. *N. L. R. B.* v. *Jacobs Mfg. Co.,* 196 F. 2d 680, 683 (C. A. 2).

Finally, even apart from the bargaining situation which existed on January 14, 1955, after which Oxnard refused to meet with the Union, Oxnard was scarcely in a position to continue in its refusal fol-

[5] Apart from union security, the only other matter on which there appeared to be substantial disagreement was the question of whether the family members of the citrus growers whose goods were processed by Oxnard should be entitled to job preference (R. 110–111). This question, however, was regarded by the parties as closely related to the union security issue, in view of the fact that under the Union's proposal such persons would have to become Union members (R. 128–129, 140, 154, 157). Moreover, the question was of no apparent practical importance, since there had been no employment by Oxnard of growers' families for the past eight or ten years (R. 155). And significantly, as Oxnard concedes (Br. 12), its representatives "at no time said that it would not recede or compromise on the farm family matter."

lowing the Union's letter of March 11. For in it the Union made explicit that if the parties "were able to negotiate a generally satisfactory agreement, the Union Shop matter would not stand in the way of * * * signing a contract" (R. 56). Moreover, in the same letter the Union emphasized its willingness to "recommend compromise on the Union Shop" and requested "that negotiations be resumed at the earliest possible time" (*ibid.*). Accordingly, whether or not Oxnard could have viewed the union shop issue as an insurmountable obstacle on January 14, it certainly had no basis for continuing that view after March 11. Its continuing refusal to meet with the Union after March 11 can thus in no event be justified on the ground that an impasse foreclosed the necessity of further negotiations. Compare, *N. L. R. B.* v. *Hill Stores,* 140 F. 2d 924 (C. A. 5); *Jeffery De-Witt* v. *N. L. R. B.,* 91 F. 2d 134, 139–140 (C. A. 4); certiorari denied, 302 U. S. 731.

CONCLUSIONS

For the foregoing reasons, the Board respectfully requests that its order be enforced in full.

THEOPHIL C. KAMMHOLZ,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
MARCEL MALLET-PREVOST,
Assistant General Counsel,
NORTON J. COME,
DUANE BEESON,
Attorneys,
National Labor Relations Board.

FEBRUARY 1956.

U. S. GOVERNMENT PRINTING OFFICE: 1956